

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

No. 08-2821

Edward W. Sunder; Louis R.  
Jarodsky,

Plaintiffs-Appellees,

V.

# U.S. Bancorp Pension Plan,

Defendant,

# U.S. Bank Pension Plan,

Defendant-Appellant,

Mercantile Bank Horizon 401(k)  
Investment & Savings Plan;  
Mercantile Bank Cash Balance  
Retirement Plan,

Defendants.

Appeal from the United States  
District Court for the  
Eastern District of Missouri.

[UNPUBLISHED]

Submitted: January 13, 2010

Filed: August 5, 2010

Before MURPHY, HANSEN, and BYE, Circuit Judges.

PER CURIAM.

Appellant U.S. Bank Pension Plan appeals from the district court's award of attorney fees and costs in favor of Edward W. Sunder and Louis R. Jarodsky stemming from the favorable district court judgment on their ERISA claims. We reversed the underlying judgment in favor of Sunder and Jarodsky, see Sunder v. U.S. Bancorp Pension Plan, 586 F.3d 593, 603 (8th Cir. 2009), and the court held this attorneys' fee appeal in abeyance pending Sunder and Jarodsky's petition for certiorari to the Supreme Court. The time for filing a petition for certiorari has lapsed, and the appellees have not filed a petition.

On May 13, 2010, the court directed the parties to show cause why the district court's attorneys' fee award should not be reversed. Having received no response from Sunder or Jarodsky, we vacate the district court's award of attorneys' fees and costs since the basis for the award no longer exists. See Dillard's Inc. v. Liberty Life Assur. Co. of Boston, 456 F.3d 901, 903 (8th Cir. 2006) ("Because Dillard's is no longer the prevailing party in the underlying ERISA suit, we vacate the district court's award of attorney's fees and costs.") (per curiam).

The district court's judgment is reversed and its order vacated.

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